



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 273 OF 2022
WITH
CRIMINAL INTERIM APPLICATION NO.2008 OF 2022
IN
CRIMINAL REVISION APPLICATION NO. 273 OF 2022

Namdev Khannappa Sisal and Ors.

... Applicants.

Versus

Balabai @ Surekha Namdev Sisal and Anr.

... Respondents.

Mr. Anand S. Patil, Advocate for the Applicants.

Mr. Nitin B. Patil, Advocate for the Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 31, 2024

P. C.:

1. The revisional jurisdiction of this Court has been invoked to challenge the judgment passed by the Sessions Court on 3rd March, 2022, rejecting the Appeal and confirming the findings of the Judicial Magistrate, First Class.

2. The facts of the case are that the Application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "DV Act") was filed by the Respondent No.1- wife under Sections 12, 18, 19, 20 and 22 seeking protection

orders, compensation of Rs.2,00,000/-, restraining orders and the maintenance of Rs.5,000/- p.m. The Application came to be resisted by the Revision-Applicant claiming that the Respondent No.1 was not his wife and as such, there is no question of any act of domestic violence. It was contended that the Respondent No.1 has no relationship with the Revision-Applicant and as such, she is not entitled to compensation or maintenance.

3. The parties went to trial. The trial Court after considering the evidence which has brought on record partly allowed the Application and passed the protection order, order of monthly maintenance of Rs.3,000/- and residence order directing the Revision-Applicant to handover two rooms for the purpose of residence of the Applicant-wife and granted compensation of Rs.50,000/-. The Appellants filed Criminal Appeal No.6 of 2021 which came to be dismissed.

4. Heard Mr. A.S. Patil, learned counsel appearing for the Revision-Applicants and Mr. N.B. Patil, learned counsel appearing for the Respondent No.1.

5. Mr. A.S.Patil, learned counsel appearing for Revision-

Applicant would submit that the Respondent no.1-wife has failed to prove that she is legally wedded wife of the Revision-Applicant. He has taken this Court to the findings of the Trial Court and would submit that negative burden has been placed upon the Revision-Applicant to prove that no act of domestic violence has been committed by the Revision-Applicant. He submits that he is married to another lady and not to the Respondent no.1. Pointing out the cross-examination, he submits that the Respondent No.1 has admitted that apart from the wedding invitation card as well as the statement given to the police station, there are no documents to prove the marriage between the Revision-Applicant and the Respondent no.1. He submits that once there is failure to prove that the Respondent No.1 is a legally wedded wife of the Revision-Applicant, no question of grant of any relief arises.

6. *Per contra*, learned counsel appearing for the Respondent No.1 has supported the impugned order. He submits that there are concurrent findings of the trial Court and the Appellate Court and in revision jurisdiction the same ought not to be interfered with.

7. Considered the submissions and perused the records.
8. The Application filed by the Respondent No.1-wife under the provisions of DV Act pleads that on 24th August, 2008, the marriage of the Revision-Applicant and the Respondent No.1 was solemnized. It is pleaded that the Respondent no.1's father had given certain gold ornaments and had borne 50% of the wedding expenses by giving Rs.25,000/- in cash. It is pleaded that subsequently, the Revision-Applicant started harassing the Respondent No.1 and demanded sum of Rs.50,000/-. It is pleaded that in the year 2009, when the Respondent No.1's father came to the matrimonial house to take the Respondent No.1 to the parental home for Ganpati festival, the Revision-Applicant had a quarrel with the Respondent no.1's father and thereafter, forcibly removed the gold chain wore by the Respondent No.1 and then sent her to the parental house. It is pleaded that due to the constant demand of dowry, the Respondent No.1's sister, her brother-in-law, and her cousin sister-Shobha bought Rs.20,000/- and gave the same to the Revision-Applicant No.1 and his brother.
9. It is further pleaded that in January, 2010, the

Respondent No.1 was driven out of the matrimonial house and due to the assault, she was forced to take medical treatment. It is pleaded that later on, the Respondent No.1 came to know that on 31st July, 2010, the Revision-Applicant No.1 has married one Laxmibai and police complaint was lodged. It is pleaded that the Respondent No.1 does not have any source of income, whereas the Revision-Applicant is having landed property of about two acres and house property having 19 rooms which are given on rent. It is pleaded that the Revision-Applicant earns an income of Rs.2,00,000/- from agricultural lands and is also working in Monograph Company and earning monthly salary of Rs.10,000/-.

10. In support of her submissions, she has produced voluminous documentary records. As regards the property, she has produced the 7/12 extract as well as assessment extract of Grampanchayat. In support of the contention that she is the legally wedded wife of the Revision-Applicant, she has examined one Kammanna Borgave and Arti Mahadeo Nandrekar and has also produced the statement given by the Revision-Applicant to the police station and also copy of the Aadhar Card. She has also

produced the certified copy of the marriage invitation card which was produced in Regular Civil Suit No.687 of 2010 and other documents.

11. The trial Court considered that the Revision-Applicant No.1 has admitted in his statement to the police station that he is married to the Respondent No.1. The trial Court also considered that the witness examined by the Respondent No.1 has deposed that they were present for the wedding ceremony. In the cross-examination it appears that the witness admitted that he does not remember the date of marriage. Even if, the witness does not recollect the date of marriage, it needs to be noted that there is no admission elicited in the cross-examination which would support the case of the Revision-Applicant. It also needs to be noted that PW-2 is an illiterate person and as such, not much importance can be given to his deposition in the cross-examination, that he does not recollect the date of the marriage.

12. Considering the documentary as well as oral evidence brought on record, the Court has rightly appreciated the evidence. No infirmity can be found in the finding of the trial Court that the

Respondent No.1 is the legally wedded wife of the Revision-Applicant.

13. Apart from that, the definition of 'domestic relationship' found in Section 2(f) of the DV Act, would indicate that it means a relationship between two persons, who are related even through a relationship in the nature of marriage. Considering the wide definition of 'domestic relationship', it cannot be said that the provisions of the D.V. Act are inapplicable. There is no material produced before this Court to show that any evidence has been adduced to indicate that the Respondent No.1 was not residing with the Revision-Applicant after the marriage. As such, the trial Court and the Appellate Court has rightly held that the provisions of the D.V. Act are applicable.

14. As regards the act of domestic violence, the pleadings in the Application would show that the monetary demand was made and as such, the same falls within the definition of 'Domestic Violence' as defined under Section 3 of the DV Act. The trial Court has held that the refusal of the relationship between the parties has resulted in an emotional abuse of the Respondent No.1, which

falls within the definition of 'domestic violence'. The trial Court has also considered the act of second marriage of the Revision-Applicant to be an act of 'domestic violence'. I find no reason to take a different view of the matter.

15. Apart from the said submission, no other submission has been advanced as regards the quantum of the maintenance or the residence relief which has been granted by the Court. The thrust of the submission was, there was no relationship between the parties which the oral as well as documentary evidence prove otherwise.

16. Having regard to the discussion above, the concurrent findings of the Courts below do not suffer from any illegality so as to warrant interference in revisional jurisdiction by this Court. Revision Application is devoid of merits and stands dismissed. In view of the dismissal of the Revision Application, Interim Application does not survive and stands disposed of.

(Sharmila U. Deshmukh, J.)